

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
) CRIMINAL NO. 05-10154-MLW
v.)
)
JOHN J. DIAMONT, JR.,)
Defendant)

GOVERNMENT'S MOTION TO BIFURCATE THE MARCH 8 EVIDENTIARY HEARING

The government hereby moves to bifurcate the scheduled evidentiary hearing to permit two witnesses to testify on March 8 and the third at a later date. In the alternative, the government asks the Court to postpone the hearing entirely to a date convenient to the Court and both parties. As grounds therefor, the government states the following:

On January 22, 2007, the Court entered an Order setting an evidentiary hearing for March 8, 2007, and requiring the government to cause Yale Strogoff, Jane Lemelin and IRS Special Agent Timothy Saunders to be present. The government has since learned that Strogoff's attorney, whom Strogoff wishes to be present at the hearing, will be unavailable from February 28 through March 10 on a previously scheduled and prepaid vacation.

In light of this circumstance, the government asks the Court to proceed on March 8 with just Lemelin's and Saunders' testimony. The Court may be able to decide the admissibility of the contested records under FRE 803(6) based on their testimony alone. If not, then Strogoff's testimony can be taken at another

date.

The attorney for the government has consulted with counsel for defendant John J. Diamont, Jr., who opposes bifurcating the hearing and prefers that it be continued in its entirety to another date when Strogoff will be available. Counsel for Diamont stated that he will be filing an opposition to this motion by the close of business on February 20, 2007, and asks the Court to postpone decision on this Motion until then.

The government is concerned that a lengthy continuance of this matter will bring the hearing, and any resulting decision, near to the scheduled trial date, which will impact on the government's trial preparation.

Therefore, the government moves the Court to bifurcate the hearing as described above. In the alternative, the government asks the Court to postpone the hearing to a date mutually convenient to the Court and both parties.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Mark J. Balthazard
MARK J. BALTHAZARD
Assistant U.S. Attorney

Certificate of Service

I hereby certify that on February 16, 2007, this Notice of Appeal filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those

indicated as non-registered participants.

/s/ Mark J. Balthazard
MARK J. BALTHAZARD
Assistant U.S. Attorney